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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

Adoption of CHRISTIAN A. et al., Minors.	B165754
ARNOLDO A. et al.,  Plaintiffs and Appellants,  v.  JUAN C. et al,  Defendants and Respondents.	(Los Angeles County Super Ct. Nos. BT024416, BD375900)

APPEAL from an order of the Superior Court of Los Angeles County,  
John L. Henning, Judge. Affirmed.

Alice C. Shotton, under appointment by the Court of Appeal, for Plaintiffs and Appellants.

Marc Gradstein and Jane A. Gorman for Defendants and Respondents.

Arnoldo A. and Maria A., residents of Guatemala, appeal an order denying their petition for registration of a guardianship order issued by a court in Guatemala pertaining to their grandchildren, Christian A. and Hazel A. The superior court declined to recognize or enforce the guardianship order and then approved the children's adoption by Juan C. and Hilaria C., their maternal uncle and aunt. Arnoldo and Maria contend (1) the court's conclusion that Juan and Hilaria were not given proper notice of the guardianship proceeding in Guatemala was error; and (2) the court's refusal to recognize the guardianship order on the ground that the Guatemalan court did not address concerns with the children's safety was error. We affirm the denial of the petition for registration on the ground that Juan and Hilaria were not given proper notice of the guardianship proceeding in Guatemala.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Factual Background***

Christian and Hazel were born in Guatemala in September 1992 and June 1997, respectively. They resided in Guatemala with their mother and father until their parents were killed in two separate attacks. Their mother was shot and killed in February 2001 in Hazel's presence, and their father, who had dedicated himself to bringing to light the circumstances of his wife's murder, was shot and killed in May 2001 in the presence of both children. The United States State Department reported that the investigation of the murders was deficient and suggested that the murders may have been politically motivated.

Juan, the children's maternal uncle, brought the children to California on May 18, 2001, shortly after the second murder, to protect them from potential danger. Maria A., the children's paternal grandmother, accompanied them. Maria A. returned to Guatemala after two weeks, but the children have remained in California.

#### ***2. Court Proceedings in Guatemala***

A family court in Guatemala City, the Third Family Court, appointed Arnoldo and his son, Fausto A., provisional guardians of the children on May 30, 2001, and appointed

them temporary guardians on June 28, 2001, according to an order by that court dated September 30, 2002. The Second Family Court in Guatemala City appointed Juan and his mother, Maria F., Juan temporary guardians in an order dated May 31, 2001. The Fourth Juvenile Court in Guatemala City appointed Maria F. temporary guardian in an order dated June 1, 2001. The orders do not reference each other.

The Third Family Court in Guatemala City appointed Arnoldo and Fausto guardians of the children, apparently a permanent appointment, in an order dated October 12, 2001.

The Second Family Court in Guatemala City ordered that the children not be returned to Guatemala for a period of six months to ensure their safety, in an order dated December 30, 2001. Arnoldo and Maria maintain that the order was reversed in July 2002, although they cite no evidence in the appellate record. In any event, the order appears to have expired by its own terms.

### *3. Court Proceedings in California*

Juan and Hilaria petitioned the Los Angeles Superior Court for adoption of the two children on October 23, 2001. On September 6, 2002, Arnoldo petitioned the Los Angeles Superior Court for registration of the Guatemalan guardianship order dated October 12, 2001. The superior court consolidated the two actions. Maria apparently joined in the petition filed by Arnoldo.

After a hearing on the merits of the petition for registration, the superior court concluded that Juan and Hilaria were not given proper notice of the guardianship proceeding in Guatemala. The court also stated at the hearing on the petition that there was “no evidence to indicate that the guardianship proceedings addressed any issue with respect to the children’s safety . . . . Those issues were not properly presented to the Guatemalan court as far as evidence that has been presented to the court indicates.” The court therefore declined to recognize or enforce the guardianship order and entered an order dated January 22, 2003, denying the petition for registration.

The court invited Arnoldo and Maria to participate in the adoption hearing, but they declined. After a hearing on the merits, the court approved the children's adoption by Juan and Hilaria in an order dated January 24, 2003.

Arnoldo and Maria appealed the order denying the petition for registration of the guardianship order.

### ***CONTENTIONS***

Arnoldo and Maria contend (1) the superior court's conclusion that Juan and Hilaria were not given proper notice of the guardianship proceeding in Guatemala was error; and (2) the court's refusal to recognize the guardianship order on the ground that the Guatemalan court did not address concerns with the children's safety was error.

### ***DISCUSSION***

Family Code section 3405, part of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam. Code, § 3400 et seq.), governs the recognition and enforcement of a foreign child custody determination:

“(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

“(b) Except as otherwise provided in subdivision (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

“(c) A court of this state need not apply this part if the child custody law of a foreign country violates fundamental principles of human rights.”

The statutory language “factual circumstances in substantial conformity with the jurisdictional standards of this part” (Fam. Code, § 3405, subd. (b)) refers to facts that justify the exercise of jurisdiction, such as the fact that notice was provided to absent persons with an interest in the proceedings. (See *id.*, §§ 3408, subd. (a), 3425, subd. (a).)

Family Code section 3408, subdivision (a), states, “Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.” Family Code section 3425, subdivision (a), states, “Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of Section 3428 must be given to all persons entitled to notice under the law of this state . . . , any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.”

Thus, a foreign country child custody determination must be enforced in California only if notice was provided to “any person having physical custody of the child” (Fam. Code, § 3425, subd. (a)) and was provided “in a manner reasonably calculated to give actual notice” or by publication if other means were not effective (*id.*, § 3408, subd. (a)), or if notice was provided in “substantial conformity” (*id.*, § 3405, subd. (b)) with these requirements.

We review de novo the question whether notice was provided in substantial conformity with these legal requirements. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799 [application of law to undisputed facts].) To the extent that our determination turns on disputed factual questions, we review the superior court’s factual findings under the substantial evidence standard. (*Id.* at p. 801.)

Juan and Hilaria have had physical custody of the children since May 2001 and therefore, under the UJEA, were entitled to notice of the Guatemalan guardianship proceeding. (Fam. Code, § 3425, subd. (a).) The undisputed evidence is that Arnoldo did not attempt to serve Juan and Hilaria with written notice of the proceeding at any time and did not orally inform them that he was seeking custody until September 2001, when he spoke with Juan by telephone. That telephone conversation occurred several months after Arnoldo had initiated the proceeding and received temporary appointments as guardian. Arnoldo and Maria suggest that Juan should have learned of the proceeding through his own attorney in Guatemala who was seeking custody on Juan’s behalf in another proceeding, but they cite no evidence that Juan received actual notice. We

conclude that Juan and Hilaria were not provided notice in substantial conformity with UCCJEA requirements.

***DISPOSITION***

The order is affirmed. Juan and Hilaria are entitled to costs on appeal.

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KITCHING, J.

We concur:

KLEIN, P.J.

CROSKEY, J.